

## **REMARKS**

Claims 2 and 3 are currently pending in the subject patent application.

In the subject Office Action, claims 2 and 3 were rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251 since the Examiner stated that the reissue oath/declaration filed with the present application is defective because none of the errors which are relied upon to support the reissue application are errors upon which a reissue can be based. In accordance with 35 U.S.C. 251, the Examiner continued, the error upon which a reissue is based must be one which causes the patent to be "deemed wholly or partially inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent. The Examiner concluded that a proper error under 35 U.S.C. 251 has not been presented since the correction to the patent is one of spelling, or grammar, or a typographical, editorial or clerical error which does not cause the patent to be deemed wholly or partly inoperative or invalid. The Examiner then asserted that the corrections to the patent identified in the reissue oath/declaration filed on 11 August 2008 do not provide a basis for reissue, and may be made via a certificate of correction since although numerous, fall into the category of spelling, grammar, typographical, editorial, or clerical errors.

In an Office Action dated 06 November 2008, the Examiner rejected claim 1 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Attached to this RESPONSE G, applicant has provided a substitute REISSUE APPLICATION DECLARATION BY THE INVENTOR stating that the inventor verily believes that the original patent to be wholly or partly inoperative by reason of the patentee claiming more or less than he had the right to claim in the patent, and identifying the Office Action dated 06 November 2008 as having rejected subject claim 1, the sole claim in the parent patent, under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant respectfully believes that this action by the Examiner provides adequate support for applicant's having filed a REISSUE APPLICATION which is

now clearly reflected in the attached REISSUE APPLICATION DECLARATION BY THE INVENTOR.

Claim 1 was amended and claims 2 and 3 were newly added in AMENDMENT E dated 06 February 2009. The Examiner allowed claims 2 and 3 and rejected claim 1 in the Office Action dated 10 June 2009. Applicant canceled claim 1 in AMENDMENT F dated 10 August 2009, and claims 2 and 3 were allowed in the Office Action dated 16 September 2009.

In a MEMORANDUM entitled "Supreme Court Decision in *Bilski v. Kappos*," issued by the U.S. Patent And Trademark Office on 28 June 2010, guidance was provided to Patent Examiners as follows: "... Examiners should continue to examine patent applications for compliance with section 101 using the existing guidance concerning the machine-or-transformation test as a tool for determining whether the claimed invention is a process under section 101. If a claimed method meets the machine-or-transformation test, the method is likely patent-eligible under section 101 unless there is a clear indication that the method is directed to an abstract idea. ... ." Therefore, applicant believes that the Examiner's allowance of claims 2 and 3 should stand in view of the recent decision by the Supreme Court in *Bilski v. Kappos*.

In view of the discussion presented hereinabove, applicant believes that claims 2 and 3 are allowable, and such action by the Examiner at an early date is earnestly solicited.

Reexamination and reconsideration are respectfully requested.

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Respectfully submitted,

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